

**MOTOR VEHICLE REPAIRS - CONSUMER
RIGHTS**

2005 GENERAL SESSION
STATE OF UTAH

Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill modifies the Insurance Code and the Motor Vehicle Business Regulation Act by amending provisions relating to consumer rights in motor vehicle repairs.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides that an insurer may not:
 - limit coverage for a damaged motor vehicle by limiting the beneficiary of a policy from selecting a repair person or body shop to repair a damaged motor vehicle covered under the policy;
 - require more than two estimates to repair a damaged motor vehicle as a condition of payment for a claim; or
 - demand or take discounts for parts or labor that are not reflected in a repair estimate that is agreed on by the insurer and the body shop;
- ▶ provides that an insurer may:
 - write or secure an additional damaged motor vehicle repair estimate at the insurer's own expense;
 - recommend a body shop and provide education on the guarantees and other economic advantages of that recommendation;
 - provide a list of certain body shops in the geographic area; or



- require that payment for repair of a damaged motor vehicle is limited to competitive market parts or labor rates;
 - ▶ provides procedures for establishing a competitive market labor rate;
 - ▶ provides that if an insurer violates the provisions, it is an unfair claims settlement practice;
 - ▶ provides that a vehicle owner has the right to select a repair person or body shop of the owner's choice and provides that a body shop, towing service, or dealer may not require a vehicle owner to repair a vehicle at a specific body shop as a condition of rendering service or payment for a claim;
 - ▶ requires a body shop to post certain notices in a conspicuous place;
 - ▶ requires a body shop and an insurer to provide certain notices on repair estimates;
- and
- ▶ provides that if a body shop violates the provisions, it is a class B misdemeanor and a civil violation and may result in civil damages of up to \$1,000 per occurrence.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2005.

Utah Code Sections Affected:**AMENDS:**

31A-26-303, as last amended by Chapter 91, Laws of Utah 1987

41-3-702, as last amended by Chapter 334, Laws of Utah 2003

ENACTS:

31A-22-321, Utah Code Annotated 1953

31A-22-322, Utah Code Annotated 1953

31A-22-323, Utah Code Annotated 1953

31A-22-324, Utah Code Annotated 1953

41-3-901, Utah Code Annotated 1953

41-3-902, Utah Code Annotated 1953

41-3-903, Utah Code Annotated 1953

41-3-904, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-321** is enacted to read:

31A-22-321. Title.

Sections 31A-22-321 through 31A-22-324 are known as the "Consumer Vehicle Repair Insurance Claims Act."

Section 2. Section **31A-22-322** is enacted to read:

31A-22-322. Definitions.

As used in Sections 31A-22-322 through 31A-22-324:

(1) "Betterment" means a replacement part used to repair a vehicle that improves the vehicle by increasing the useful life of the part replaced before the motor vehicle was damaged.

(2) "Body shop" has the same meaning as defined in Section 41-3-102.

(3) "Insurer" means an insurance company and any person authorized to represent the insurer with respect to a claim.

Section 3. Section **31A-22-323** is enacted to read:

31A-22-323. Repair of motor vehicles.

(1) An insurer may not:

(a) directly or indirectly limit its coverage under a policy covering damage to a motor vehicle by limiting the beneficiary of the policy from selecting a body shop to repair damage to a motor vehicle covered under the policy;

(b) require an owner of a vehicle to obtain more than two estimates to repair a damaged motor vehicle as a condition of payment for a claim; or

(c) demand or take a discount for parts or labor used to repair a motor vehicle that is not reflected in a repair estimate agreed on by the insurer and the body shop.

(2) An insurer may:

(a) write or secure additional estimates to repair a damaged motor vehicle at the insurer's own expense;

(b) recommend a body shop and provide education on the guarantees and other economic advantages of using a recommended body shop;

(c) provide a list of:

(i) body shops in the geographic area; or

(ii) names of body shops in the geographic area that meet or exceed industry standards of quality, service, or safety; or

(d) require that payment for the repair of a motor vehicle be limited to competitive market parts or labor rates.

(3) If an insurer requires that payment for repair of a motor vehicle is based on a competitive market labor rate under Subsection (2)(d), the competitive market labor rate may be established by:

(a) a generally accepted insurer based methodology; or

(b) a market survey or surveys of a majority of the body shops in the geographic area that determine the fair and reasonable market labor rate for similar services.

(4) (a) Except as provided in Subsection (4)(b), an insurer, or its agents, employees, or representatives may only conduct a competitive market labor rate survey under Subsection (3)(b) by fax, electronic mail, United States mail, or through an independent third party.

(b) An insurer or its agents, employees, or representatives may conduct a market labor rate survey in person only if agreed to by the body shop or its authorized representative.

(c) If a competitive market labor rate is challenged, an insurer shall disclose the survey results for the geographic area.

(d) If an insurer is required to disclose the survey results under Subsection (4)(c), the results shall not disclose individual labor rates provided by a body shop but shall include a description of the methodology used to establish the geographic competitive market labor rate.

(5) A violation of this section is an unfair claims settlement practice under Section 31A-26-303.

Section 4. Section **31A-22-324** is enacted to read:

31A-22-324. Insurer notice requirements.

(1) An insurer shall print on the front page of any motor vehicle repair estimate in 12 point, all caps type or larger:

"YOU HAVE THE RIGHT TO HAVE YOUR VEHICLE REPAIRED AT THE BODY SHOP OF YOUR CHOICE. A DEALER, BODY SHOP, TOWING SERVICE, OR INSURANCE COMPANY MAY NOT REQUIRE YOU TO HAVE YOUR VEHICLE REPAIRED AT A SPECIFIC BODY SHOP."

(2) An insurer shall:

(a) clearly identify any parts or labor that are subject to betterment on a repair estimate;
and

(b) notify a motor vehicle owner verbally or in writing if the insurer does not agree to pay for any part of an estimate that includes parts or labor that are subject to betterment.

(3) A violation of this section is an unfair claims settlement practice under Section 31A-26-303.

Section 5. Section **31A-26-303** is amended to read:

31A-26-303. Unfair claim settlement practices.

(1) No insurer or person representing an insurer may engage in any unfair claim settlement practice under Subsections (2), (3), and (4).

(2) Each of the following acts is an unfair claim settlement practice:

(a) knowingly misrepresenting material facts or the contents of insurance policy provisions at issue in connection with a claim under an insurance contract; however, this provision does not include the failure to disclose information;

(b) attempting to use a policy application which was altered by the insurer without notice to, or knowledge, or consent of, the insured as the basis for settling or refusing to settle a claim; or

(c) failing to settle a claim promptly under one portion of the insurance policy coverage, where liability and the amount of loss are reasonably clear, in order to influence settlements under other portions of the insurance policy coverage, but this Subsection (2) (c) applies only to claims made by persons in direct privity of contract with the insurer.

(3) Each of the following is an unfair claim settlement practice if committed or performed with such frequency as to indicate a general business practice by an insurer or persons representing an insurer:

(a) failing to acknowledge and act promptly upon communications about claims under insurance policies;

(b) failing to adopt and implement reasonable standards for the prompt investigation and processing of claims under insurance policies;

(c) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by those insureds when the amounts claimed were reasonably near to the amounts

recovered;

(d) failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment was made;

(e) failing to promptly provide to the insured a reasonable explanation of the basis for denial of a claim or for the offer of a compromise settlement;

(f) appealing from substantially all arbitration awards in favor of insureds for the purpose of compelling them to accept settlements or compromises for less than the amount awarded in arbitration;

(g) delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms which contain substantially the same information; ~~or~~

(h) not attempting in good faith to effectuate a prompt, fair, and equitable settlement of claims in which liability is reasonably clear~~[-]; or~~

(i) violating a provision of Section 31A-22-323 or 31A-22-324.

(4) The commissioner may define by rule, acts or general business practices which are unfair claim settlement practices, after a finding that those practices are misleading, deceptive, unfairly discriminatory, overreaching, or an unreasonable restraint on competition.

(5) This section does not create any private cause of action.

Section 6. Section **41-3-702** is amended to read:

41-3-702. Civil penalty for violation.

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

(a) Level I:

(i) failure to display business license;

(ii) failure to surrender license of salesperson because of termination, suspension, or revocation;

(iii) failure to maintain a separation from nonrelated motor vehicle businesses at licensed locations;

(iv) issuing a temporary permit improperly;

(v) failure to maintain records;

(vi) selling a new motor vehicle to a nonfranchised dealer or leasing company without licensing the motor vehicle;

(vii) special plate violation; and

(viii) failure to maintain a sign at principal place of business.

(b) Level II:

(i) failure to report sale;

(ii) dismantling without a permit;

(iii) manufacturing without meeting construction or vehicle identification number standards;

(iv) withholding customer license plates; or

(v) selling a motor vehicle on consecutive days of Saturday and Sunday.

(c) Level III:

(i) operating without a principal place of business;

(ii) selling a new motor vehicle without holding the franchise;

(iii) crushing a motor vehicle without proper evidence of ownership;

(iv) selling from an unlicensed location;

(v) altering a temporary permit;

(vi) refusal to furnish copies of records;

(vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles; and

(viii) advertising violation.

(2) (a) The schedule of civil penalties for violations of Subsection (1) is:

(i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third and subsequent offenses;

(ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the third and subsequent offenses; and

(iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months prior to the commission of the current offense may be considered.

(3) The following are civil violations in addition to criminal violations under Section

41-1a-1008:

(a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without disclosing that the salvage vehicle has been repaired or rebuilt;

(b) knowingly making a false statement on a vehicle damage disclosure statement, as defined in Section 41-1a-1001; or

(c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded title, as defined in Section 41-1a-1001, when it is not.

(4) The civil penalty for a violation under Subsection (3) is:

(a) not less than \$1,000, or treble the actual damages caused by the person, whichever is greater; and

(b) reasonable attorneys' fees and costs of the action.

(5) The following are civil violations in addition to the criminal violations under Sections 41-3-903 and 41-3-904:

(a) requiring an owner of a damaged vehicle to repair the vehicle at a specific body shop as a condition of rendering service or payment for a claim under Section 41-3-903; and

(b) a body shop not providing notice as required under Section 41-3-904.

(6) The penalty for a civil violation under Subsection (5) may result in civil damages of up to \$1,000 per occurrence.

~~[(5)]~~ (7) A civil action may be maintained by a purchaser, the owner of a vehicle, or by the administrator.

Section 7. Section **41-3-901** is enacted to read:

Part 9. Consumer Rights for Repair of Damaged Vehicles

41-3-901. Title.

This part is known as the "Consumer Rights for Repair of Damaged Vehicles."

Section 8. Section **41-3-902** is enacted to read:

41-3-902. Definitions.

As used in this section:

(1) "Betterment" means a replacement part used to repair a vehicle that improves the vehicle by increasing the useful life of the part replaced before the motor vehicle was damaged.

(2) "Insurer" has the same meaning as defined in Section 31A-22-322.

Section 9. Section **41-3-903** is enacted to read:

41-3-903. Consumer may select a body shop.

(1) An owner of a damaged vehicle may select the body shop of the owner's choice to repair the damaged vehicle.

(2) A body shop, towing service, dealer, or its employee, agent, or representative may not require an owner of a damaged vehicle to repair the vehicle at a specific body shop as a condition of rendering service or payment for a claim.

Section 10. Section **41-3-904** is enacted to read:

41-3-904. Body shop requirements.

(1) A body shop that provides estimates for repair of a damaged vehicle shall post in a conspicuous public place a notice that states:

"YOU HAVE THE RIGHT TO HAVE YOUR VEHICLE REPAIRED AT THE BODY SHOP OF YOUR CHOICE."

(2) A body shop shall print on the front page of any vehicle repair estimate in 12 point, all caps type or larger:

"YOU HAVE THE RIGHT TO HAVE YOUR VEHICLE REPAIRED AT THE BODY SHOP OF YOUR CHOICE. A DEALER, BODY SHOP, TOWING SERVICE, OR INSURANCE COMPANY MAY NOT REQUIRE YOU TO HAVE YOUR VEHICLE REPAIRED AT A SPECIFIC BODY SHOP."

(3) A body shop shall post in a conspicuous public place the applicable labor rates for vehicle repairs.

(4) A body shop shall:

(a) clearly identify any parts or labor that are subject to betterment on a repair estimate; and

(b) notify a vehicle owner verbally or in writing if an insurer has not agreed to pay for any part of an estimate that includes parts or labor that are subject to betterment.

Section 11. **Effective date.**

This bill takes effect on July 1, 2005.

Legislative Review Note

as of 2-18-05 12:49 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0322

Motor Vehicle Repairs-Consumer Rights

22-Feb-05

2:32 PM

State Impact

No fiscal impact.

Individual and Business Impact

The disclosure and education requirements of the bill will create administrative costs for insurance companies and body shops.

Office of the Legislative Fiscal Analyst